

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

WAYNE KENNETH AUGÉ, II, M.D.,
Individually and as Trustee on Behalf of
Covalent Global Trust,

Plaintiff,

vs.

CV No. 14-1089 KG/SMV

STRYKER CORPORATION, and
HOWMEDICA OSTEONICS CORP.,

Defendants.

ORDER GRANTING MOTION TO CONTINUE TRIAL

This matter is before the Court on Defendants' Notice of Trial Conflicts and Opposed Motion for Continuance of Trial (Motion) (Doc. 389) and Plaintiff's Opposition to Stryker's Motion for a Continuance of Trial (Response) (Doc. 391). After review of the parties' briefing, the Court grants Defendants' Motion.

On April 6, 2021, the Court held a telephonic status conference to confer with the parties about their availability to schedule a jury trial. *See* (Doc. 386). At the conference, the Court proposed several different dates to schedule the trial and the pretrial conference. *See* Transcript of April 6, 2021, Status Conference at 7-8.¹ However, the Court explained it was in a "tight spot" for scheduling because of its criminal docket and a significant, multi-defendant, criminal jury trial set to commence on November 1, 2021. Tr. at 8.

After conferring with the parties about their availability, the Court asked counsel for their position on proceeding with a jury trial on August 23, 2021. Tr. at 10. In response, Plaintiff's

1. The Court's citation to the hearing transcript refers to the court reporter's original unedited version. Any final transcript may contain slightly different page numbers.

counsel stated, “That works for our schedule, [] with ... the request that we’d have an opportunity to confer with witnesses to confirm there’s no conflicts.” Tr. at 10. Defense counsel requested the same courtesy, explaining, “We need to check with our client and with our witnesses as well ... before we can commit to anything.” Tr. at 10-11.

The Court accepted the parties’ request and instructed counsel to confirm their clients’ availability for August 23, 2021. Tr. at 10. With this provisional commitment, the Court explained it would “go ahead and set [the trial] for the 23rd.” Tr. at 11. However, the Court explained that counsel should “see what [their] witnesses can do and if there’s a need ... to move to continue, confer amongst yourselves and file a motion.” Tr. at 12. Exactly two weeks later, defense counsel filed the instant Motion—explaining that several conflicts curtailed the participants’ availability for the August 23, 2021 trial. *See* (Doc. 389) at 4.

In the Motion, defense counsel explains that two members of their trial team have a substantial three-week jury trial scheduled to commence in early September 2021, posing significant difficulty to fruitfully participate in both matters set to begin only weeks apart. *Id.* at 5. In addition, another member of Defendant’s trial team is expected to be on maternity leave beginning August 15, 2021. *Id.* Lastly, two of Defendant’s witnesses have pre-existing professional obligations that abut the trial’s commencement during the week of August 23, 2021. *Id.* at 6. Specifically, one witness is scheduled to attend a week-long annual meeting during the preceding week, and another is scheduled to testify in a two-week jury trial in Delaware. *Id.*

Given these conflicts, the diligence defense counsel exercised in promptly filing their Motion, and the Court’s amenability to modifying the trial date after granting counsel an opportunity to confer with their trial teams, the Court will reset the jury trial. However, notwithstanding the unavailability of one member of the defense team, the parties indicated their

availability to participate in the previously scheduled pretrial conference, set to commence on August 9, 2021. As a result, the Court will not continue the pretrial conference and will proceed as scheduled.

The Court notes Plaintiff's opposition to the relief granted herein. *See* (Doc. 391). The Court is sensitive to the parties' desire for a disposition in this case. However, the COVID-19 pandemic has significantly curtailed the Court's criminal and civil dockets and resulted in a lengthy jury trial moratorium. The Court acknowledges the challenge that is presented in scheduling a long awaiting jury trial. To facilitate the rescheduling of the jury trial, the Court will hold a telephonic status conference on **Tuesday, June 1, 2021, at 2:00 p.m.** Counsel are instructed to confer with all interested parties, including witnesses, and come prepared to the conference with their availability for the remainder of 2021 and early 2022.

IT IS ORDERED.


UNITED STATES DISTRICT JUDGE